

WISCONSAN TERRITORY—SETTLERS ON THE MILITARY
RESERVATION NEAR FORT SNELLING.

JUNE 10, 1842.

Read, and laid upon the table.

Mr. HOWARD, from the Committee on the Public Lands, submitted the following

REPORT:

The Committee on the Public Lands, to whom was referred the petition of sundry settlers on the east side of the Mississippi river, opposite Fort Snelling, in the Territory of Wisconsin, asking compensation for damages done to their possessions in removing them from the military reservation at that place, beg leave to report:

It appears that these settlements were commenced in 1836, before the extinguishment of the Indian title. On the 15th of June, 1838, by the ratification of the treaty made with the Sioux, at Washington, in September, 1837, that nation of Indians parted with their title to all their lands lying east of the Mississippi river, including the tract in question.

In March, 1838, while the title was yet in the Indians, the commandant at Fort Snelling, in pursuance of instructions from the War Department, made a selection of lands for the use of the garrison at that place, and by his delineation of boundaries included the several tracts occupied by the petitioners on the east side of the Mississippi. This reservation is unusually, and, so far as the committee are able to judge, unnecessarily large, embracing about fifty square miles. It is in the shape of an acute-angled triangle, having its apex about one mile and a half above the falls of St. Anthony, including a large tract lying on the northwest and in the angle formed by the junction of the Mississippi and St. Peter's rivers; a large tract lying in the bend of the former, as it sweeps round from a southeast to a northeast course; and also a considerable tract lying on the south side of the two streams, at the place of their junction. Its length is about twenty-five miles, from its highest point on the Mississippi to its southern boundary, which runs along the right bank of the St. Peter's, about ten miles, in a northeasterly direction, and thence along the Mississippi, in nearly the same direction, to a point known as Carver's Cave, where it changes its course northwesterly, and passes to the most northerly point. It also includes Pike's Island, which lies at the junction of the two rivers.

On the 22d of March, 1838, the President directed the Commissioner of the General Land Office to reserve from sale "all lands then occupied for military purposes." On the 13th of July, 1839, Mr. Poinsett, Secretary of War, requested that the Commissioner of the General Land Office might withhold from sale the tract above described, it being designated in his

letter to the Secretary of the Treasury, making that request, by the same description given it by Major Plympton, the commandant at the fort, of which the above is the substance. In pursuance of an order of the Secretary of the Treasury, the Commissioner, in his letter of instructions to the surveyor general at Dubuque, dated the 29th of July, 1839, directed that portion of the reservation lying on the east side of the Mississippi to be withheld from sale, and to be reserved for military purposes at Fort Snelling. On the 21st of October, 1839, the following order was issued by the War Department, for the removal of intruders on the reservation:

“WAR DEPARTMENT, *October 21, 1839.*”

“SIR: The interests of the service and the proper and effective maintenance of the military post at Fort Snelling requiring that the intruders on the land recently reserved for military purposes opposite to that post, east of the Mississippi river, be removed therefrom, the President of the United States directs that, when required by the commanding officer of the post, you proceed there and remove them, under the provisions of the act of March 3d, 1807, entitled ‘An act to prevent settlements being made on lands ceded to the United States, until authorized by law.’

“You will satisfy yourself of the shortest period within which the intruders can make their arrangements for removal, and depart from the reservation, without serious loss or sacrifice of the property which they may have to take with them; and you will promptly make known to them that it is expected that they will not delay beyond that period; as, should they do so, it will become your duty to remove them by military force. It is hoped, however, that a resort to such force for this purpose, which, by the act above mentioned, the President is authorized to employ, will not be necessary; but that they will promptly depart, on being informed of the determination of the Executive not to permit them to remain. Should, however, you be unfortunately obliged to use force in order to accomplish the object, you are authorized to call, for such as you may deem necessary, on the commanding officer at Fort Snelling. In this event, you will act with as much forbearance, consideration, and delicacy, as may be consistent with the prompt and faithful performance of the duties hereby assigned to you, first fully and mildly explaining the folly of resistance on their part, and your own want of discretion in the matter.

“Very respectfully, your obedient servant,

“J. R. POINSETT.

“EDWARD JAMES, Esq., *United States Marshal*
for the Territory of Wisconsin, Peru, Wisconsin.”

In pursuance of these instructions, the marshal of Wisconsin district proceeded to remove the petitioners. To do this, it was (as appears from his report) necessary to resort to military force in the *first instance*. It does not distinctly appear that the commandant of the fort “*required*” the removal of the petitioners from the lands they had occupied, though, from the tenor of the following letter from James, the marshal, it may be reasonably inferred that he had made the requisition directed by Mr. Poinsett. By the instruction of the latter gentleman, military force was authorized to be used, in case the settlers should delay beyond the time fixed for their removal by the marshal. This was the 6th of May, 1840. Such force is expressly authorized by the act of 3d March, 1807, which declares that

"it shall be lawful for the President to employ such military force as he may judge necessary and proper to remove from lands ceded or secured to the United States, by treaty or cession, as aforesaid, any person or persons who shall hereafter take possession of the same." It seems, however, in this case, that the marshal departed from the instructions given him by the War Department, and, instead of waiting for the voluntary removal of the settlers on the 6th of May, as he was directed to do by the Secretary of War, proceeded to use *military force* on that day. The manner of executing the order is given in the following letter from the marshal :

"MARSHAL'S OFFICE, MINERAL POINT, *June 6, 1840.*

"SIR: I have to inform you that your instructions of October 21, 1839, relative to the removal of intruders from the military reservation at Fort Snelling, have been complied with. Mild and lenient measures were resorted to in the first instance, in compliance with the tenor of your instructions, and most of them appeared disposed to remove without occasioning any difficulty ; but, within a day or two of the period assigned for their removal, (6th of May,) they evinced a contrary disposition ; and finally, their determination appearing decided, resort was had to military force. The assistance was promptly furnished by the commanding officer of the post, and the intruders and their effects removed from the buildings, and the latter rendered untenable, to prevent their immediate return. The next day (May 7) the reservation east of the river was entirely clear of intruders. The greater part of them being Swiss, the services of an interpreter were required. To these circumstances may be partially attributed the necessity of using force.

"Respectfully, your obedient servant,

"EDWARD JAMES,

"*U. S. Marshal of Wisconsin.*

"Hon. J. R. POINSETT,

Secretary of War."

It will be recollected that, by the order from the War Department, military force was not to be employed until *after* the day fixed for their departure, it being deemed indelicate to direct an armed soldiery against helpless women and children, until all other means had failed. The employment of the troops, therefore, on the 6th of May, was manifestly unauthorized, and, the committee think, deserving of censure. The authority given by the act of 1807 is of an extraordinary character. It justifies the issuing of a general warrant for the seizure of all persons suspected by the President to be intruders on the public domain, and neither requires an affidavit to support it nor the insertion of the name or description of the persons to be seized. Its constitutionality has more than once been called in question, and can be defended only on the ground that the United States, like a private person, have the right to resort to immediate summary means to remove trespassers from their lands. A power so summary in its nature ought to be used with great caution.

It appears in the present case, from the statement of Mr. Ira B. Brunson, the deputy marshal, who actually executed the order, "that after the people residing upon the reserve had left, in obedience to the order, their houses and other buildings were demolished by a detachment of United States troops, in order to prevent them from being reoccupied." The committee

are of course unable to judge of the necessity of this destruction of property, (amounting, as it appears, to about eight thousand dollars;) and the only possible justification for such an unusual exercise of power must be found in the effectual execution of the Secretary's order. If such a step was necessary, the committee cannot see that the petitioners, though they may have been treated harshly, can make any claim to damages against the United States.

They do not, however, rest their claim upon this ground, but contend that they were rightfully in possession under the pre-emption act of June 22, 1838. But that act required settlement for four months previous to the date of its passage, and specially provided that it "should not be so construed as to give a right of pre-emption to any person or persons in consequence of any settlement or improvement made before the extinguishment of the Indian title to the land on which such settlement or improvement was made." To give them such a possessory right as was secured by the pre-emption act of 1838, it was necessary, therefore, that the Indian title should have been extinguished four months previous to the 22d of June, 1838—the date of the act. That not being the case, they could assert no possessory right to the lands they occupied.

The committee think, upon the whole, that though their removal and the destruction of the buildings by the troops exhibit something of severity on the part of the officers concerned, yet the claim to indemnity is without legal foundation.

Resolved, That the prayer of the petitioners ought not to be granted.